

# Legislative Council Service

## Information Memorandum

DATE: September 23, 2015

TO: Members of the House Special Investigatory Committee

FROM: John Yaeger and Douglas H. M. Carver

SUBJECT: IMPEACHMENT PROCEDURES

This memorandum is intended to provide a high-level review of impeachment procedures.

The Constitution of New Mexico provides that elected state officers may be impeached for "crimes, misdemeanors and malfeasance in office". The sole power to impeach rests with the New Mexico House of Representatives. The "concurrence of a majority of all members elected" to the house is required to impeach. The Constitution of New Mexico, unlike many other state constitutions, provides that an officer who is impeached is immediately prohibited from exercising the powers and duties of office until and unless the officer is acquitted by the senate.

An officer who is impeached is tried by the senate. A vote of two-thirds of the members elected to the senate is necessary to convict.

Impeachment does not preclude a criminal prosecution or civil action; and the lack of a criminal conviction or civil judgment does not preclude impeachment.

As far as this office is able to determine, no New Mexico official has been impeached. There are no procedural requirements or guidance in the constitution, statute or the rules of the house on how to proceed when considering an impeachment, and thus the house may use any process it believes best suits its needs. The house has at least twice initiated impeachment proceedings — in 2005 against the state treasurer and in 2011 against a public regulation

commissioner. In both cases, a similar structure was used for the investigation. The 2011 investigation proceeded further than the 2005 investigation, but in both cases, the official being investigated for impeachment resigned prior to articles of impeachment being submitted to the house for a vote.

In both cases, a subcommittee of the House Rules and Order of Business Committee consisting of an equal number of members of the majority and minority was appointed to consider whether articles of impeachment were warranted. In each case, the subcommittee considered a variety of issues ranging from organizational matters to the standard of proof it would apply in its consideration of the evidence. Each subcommittee retained special counsel.

Under this model, the subcommittee would consider the evidence as presented by special counsel and, if it believed the evidence warranted, draft articles of impeachment for presentation to the house of representatives.

While the legislature was in special session (for reasons other than impeachment) when both the 2005 and 2011 impeachment proceedings were initiated, it is not necessary for the legislature to be in session for the house to initiate an investigation. The speaker of the house has the authority to create, appoint and charge a special committee to begin an investigation. Authority must be obtained, however, to expend the funds necessary to retain special counsel and reimburse committee members for per diem and mileage.

The legislature would have to be in session for the house to vote on impeaching an officer. Additionally, were a subpoena required, the legislature would have to be in session in order for the house to issue the subpoena. The Constitution of New Mexico provides for regular sessions, special sessions called by the governor and extraordinary sessions initiated by the legislature. This office believes the appropriate way to convene the legislature, if it is not already in session, is for the legislature to call itself into extraordinary session, since consideration of impeachment is solely a function of not just the legislature, but only one chamber of the legislature. Further, while a special session is limited to 30 days, an extraordinary session may exceed 30 days if an impeachment trial is pending.